

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding to Investigate the)
Implementation of Feed-in Tariffs.)
_____)

DOCKET NO. 2008-0273

PUBLIC UTILITIES
COMMISSION

2010 MAR 15 P 3:24

FILED

**TAWHIRI POWER LLC'S
COMMENTS RE: PROPOSED RELIABILITY STANDARDS WORKING GROUP
AND
CERTIFICATE OF SERVICE**

HARLAN Y. KIMURA
ATTORNEY AT LAW, A LAW CORPORATION
Central Pacific Plaza
220 South King Street, Suite 1660
Honolulu, Hawaii 96813
Telephone No. (808) 521-4134

Attorney for Tawhiri Power LLC

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

k

In the Matter of the Application of)	
)	
PUBLIC UTILITIES COMMISSION)	DOCKET NO. 2008-0273
)	
Instituting a Proceeding to Investigate the)	
Implementation of Feed-in Tariffs.)	
)	
_____)	

**TAWHIRI POWER LLC'S
COMMENTS RE: PROPOSED RELIABILITY STANDARDS WORKING GROUP**

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII:

TAWHIRI POWER LLC ("TPL") hereby submits its comments to the Reliability Standards Working Group ("RSWG") proposed by Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO") (collectively, the "HECO Companies") as clarified in its filing with the Hawaii Public Utilities Commission (the "Commission") on February 26, 2010. TPL's Consultant and Expert Witness, Dr. Mohamed El-Gasseir, provided the bulk of the comments, proposals, and arguments, set forth herein.

I. INTRODUCTION

Since the Commission issued its September 25, 2009 landmark Decision and Order establishing a Feed-in Tariff Program for Hawaii ("FiT"), the parties herein have made considerable progress in finalizing the tariff details for Tiers 1 and 2, and there appears to be consensus with the implementation step for at least the HECO system. However, the same cannot be said with respect to the HELCO and MECO systems. There is considerable

disagreement not only with on the implementation target(s) for the Counties of Hawaii and Maui, but also with the methodology to resolve the outstanding remaining issues in the FiT program. This is not surprising since the source of the problems impeding further development of renewable energy resources is the inevitable increase in curtailment of existing and future renewable generators because of the apparent lack of sufficient grid flexibility to allow interconnection of new non-utility generating capacity.¹ As described in detail in prior TPL's filings, this problem is encountered by FiT generation developers, as well as investors of other renewable generation resources. Accepting the representation of the Hawaiian Electric Companies that there is "no room" for additional generation for the Maui and Hawaii grids will only lead to unnecessary increased curtailment of existing renewable generation irreparably damaging their revenue streams and property values; the consequences of which would result in a destabilization of the very industry the Commission sought to encourage. TPL submits a more reasoned approach would be for the Commission to critically analyze those representations in order to avoid implementing counterproductive and contrarian actions undermining the goals of the Hawaii Energy Agreement.²

Several parties have urged the Commission to assume the leadership position in the U.S. by being the first to implement a FiT program. Interestingly enough, due to the perceived high penetration of renewable generation to the grids in Maui and the Big Island, the State of Hawaii is and will continue to remain in the spot light both in the U.S. and internationally. However, the origin of this attention is not associated with its first place ranking or the amount of the megawatt-hours generated by numerous renewable resources. Rather, the policy makers around the world are looking for answers from *Hawaii's experience as it copes*

¹ See generally HECO Response to Commission dated February 26, 2010.

² Energy Agreement Among The State Of Hawaii, Division Of Consumer Advocacy Of The Department Of Commerce And Consumer Affairs, And The Hawaiian Electric Companies ("Energy Agreement").

with the impending transition of the islands of Maui and Hawaii from renewable-energy saturated systems to fully – or near fully – renewable-powered grids. In essence, the solution to be formulated would address the need for an orderly and acceptable mechanism to reduce the expense to residential and small customers with limited capacity to eliminate escalating utility rates. The Commission’s actions in this docket will be closely observed and evaluated throughout the world for solutions as other countries’ grids also begin to experience the penetration levels already found in the Maui and Big Island grids.

The goal of these comments is to outline the three (3) steps TPL believes must be taken as the Commission guides consumers and the industry to a stable renewable energy economy in Maui and the Big Island. These steps are:

1. Send a clear and definitive signal to all stakeholders the Commission is serious, but fair and consistent, in its intent to safeguard the development of a strong and viable renewable energy industry in the State by declaring a temporary moratorium on new generation through any and all mechanisms on the Big Island and Maui;
2. Open a new docket dedicated to investigating all prospective approaches to achieving an orderly, expeditious, and cost-effective, pathway towards complete implementation of renewable resources on Maui and Hawaii; and
3. In parallel with, and to support the new docket, order the establishment of a completely independent working group to identify and assess the hard and soft costs, and benefits of alternative pathways, to achieve full transformation to a completely renewable energy economy on the Big Island and Maui (“Working Group”).

//

//

//

II. Clear And Definitive Signal

The Commission should be commended for resisting pressures to hastily permit additional generation to the electric systems on Maui and Hawaii in recognition of the potential curtailment of existing renewable generators. The utilities have also acknowledged curtailment as a mounting constraint on accepting FiT generation additions. However, HECO/HELCO's continued efforts to expand its purchase power portfolio by 32 MWs represents a double-standard that defies logic and reason, and is patently unfair. The inability of the HELCO to accept new resources without causing revenue erosion of existing producers either directly through curtailment of their production, or reduction of the prices they receive, amounts to the proverbial "Robbing Peter To Pay Paul" without inquiring whether Peter finds that acceptable. TPL submitted Information Requests to HECO/HELCO whether they intend to continue with their efforts to enter into contracts to expand the purchase power supply, and the answer given was "YES".³ Further, TPL requested information concerning these pending transactions, but the HECO Companies advised none were available.⁴

The harm of such tactics extends beyond the current generation of investors in Hawaii. Prudent developers will not enter unstable investment environments dictated by the power of an unchecked monopoly. If the Commission's FiT policy and its efforts to encourage effective renewable energy development are to succeed, the Commission must extend this proposed temporary moratorium on new generation in Maui and Hawaii to all procurement mechanisms, including bilateral (negotiated) deals, until satisfactory technical and/or commercial

³ Compare TPL's Information Requests To Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc. filed with the Commission on February 16, 2010, at TPL-HELCO-IR-12 and TPL-HELCO-IR-13, with Response To Tawhiri's Information Requests dated March 1, 2010.

⁴ Id.

solutions for the revenue erosion problem are established.

III. A Comprehensive Planning Docket Is Needed

TPL is firmly convinced that establishing limits on any particular renewable energy program in the absence of a comprehensive assessment of the technical and commercial limitations of the electric systems in Maui and the Big Island will be disastrous. This temporary moratorium should not be interpreted as an attempt to delay reform. On the contrary, TPL urges a speedy resolution of the outstanding problems with the Maui and Big Island grids, and implementation of the FiT Program, because at present even without the FiT Program it suffers from HELCO imposed curtailment and does not anticipate any improvement in the situation as evidenced by HELCO's release of the latest curtailment record. As an investor, TPL also fully supports accelerated development of renewable resources.

Solving the problems attendant with the market uncertainty experienced by consumers, and renewable energy suppliers and developers, may be achieved with the consolidation of piecemeal proceedings cluttering the Commission's schedule and resources into a single docket dedicated to undertaking a comprehensive assessment and reform of the electric industry in Maui and the Big Island. Specifically, TPL proposes the following:

- Consolidating the unresolved issues of this docket with related proceedings such as the Clean Energy Scenario Planning/Integrated Resource Planning docket (Docket No. 2008-0108), the Rule 14H docket (Docket No. 2010-0015), and the NEM docket (Docket No. 2006-0084) into a single proceeding dedicated to investigating all potential avenues to achieve orderly, expedited, and cost-effective, pathways toward economies fully powered by renewable resources in Maui and Hawaii. In particular,

the continued deliberation of the FiT Program limits in isolation from the Clean Energy Scenario Planning/Integrated Resource Planning docket (Docket No. 2008-0108) is a prime example of policy making divorced from reality.

- Expanding the subject matter of the new proceeding beyond merely overhauling reliability standards and counting mega-watts. Specifically, gauging the technical potential for accelerated renewable energy development cannot be accomplished without the ability to explore alternative market structures for the two islands.
- Opening the new docket to all stakeholders because the above recommended consolidation will enable financially constrained interested parties to participate in this new venue.
- The formation of an independent Working Group to provide the Commission and the participants in this new docket with timely information for more effective deliberation of the pertinent technical, economical and institutional issues.

IV. The Proper Working Group

The HECO Companies have proposed the formation of the RSGW whose primary responsibility is to craft reliability standards on the basis of the Fit generators absorption capacity of each grid. This approach is unlikely to succeed because of several important deficiencies.

These deficiencies, and their required corrective actions, are as follows:

- By definition, the subject matter of the RSWG is limited to technical reliability issues. While TPL agrees with the importance of safeguarding system reliability, the time constraints and limited intervenor resources permit the sequential multi-piecemeal approach implied by the HECO Companies' RSWG proposal. If FiT

developers are subjected to another delay of one or two years, that time would more wisely be spent on developing the answers which will increase mega-watts in the potential markets. As an existing generator, TPL strongly favors a concerted effort which will generate an orderly course for future development of renewable energy resources. This requirement cannot be met by isolated consideration of reliability standards for FiT programs.

- The HECO Companies will be unable to monitor and manage the proposed RSWG even if the scope of work were limited to purely technical issues. Compelling inherently unavoidable conflict of interest factors will render the utilities ineligible to manage this effort under any circumstances. As an example, the Commission observed when it decided to relegate the development of energy conservation programs to an independent entity.⁵ (For example, energy conservation can defer utility earnings on investments in generation and distribution expansion.) The desired Working Group must be independently managed by a Commission-appointed third party.
- TPL's proposed Working Group (and its consultants and experts) should also not be funded by or through the utilities as proposed by the HECO Companies. Independent funding through the Commission is an indispensable requirement.

The timing of the formation and scheduling of the activities and deliverables of the Working Group should be planned and coordinated with the initiation and scheduling of the proposed consolidated docket. If the Commission is inclined to reject the opening of a new docket as proposed by TPL, the Commission is recommended to at least establish as soon as possible a Working Group along the lines outlined above.

⁵ Commission Decision and Order No. 23258, dated February 13, 2007 at 35-36.

II. CONCLUSION:

In conclusion, TPL respectfully requests the Commission to:

- A. Declare a **“temporary”** moratorium on new generation in Maui and on the Big Island;
- B. Open a new docket dedicated to investigating all prospective approaches to achieve an orderly, expeditious, and cost-effective, pathway toward a complete implementation of renewable resources in Maui and on the Big Island;
- C. Establish the new independent Working Group to identify and assess the hard and soft costs, and benefits, of the alternative pathways to achieving a complete integration of all renewable resource generation into the Maui and Big Island grids.

DATED: Honolulu, Hawaii, March 15, 2010.



Attorney for Movant
Tawhiri Power LLC

CERTIFICATE OF SERVICE

The foregoing Opening Statement Of Position was served on the date of filing by hand delivery or electronically transmitted to each such Party.

DEAN NISHINA
EXECUTIVE DIRECTOR
DEPT OF COMMERCE & CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P.O. Box 541
Honolulu, Hawaii 96809

2 Copies
Via Hand Delivery

MR. DEAN MATSUURA
MANAGER
REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

Electronically transmitted

MR. JAY IGNACIO
PRESIDENT
HAWAII ELECTRIC LIGHT COMPANY, INC.
P. O. Box 1027
Hilo, HI 96721-1027

Electronically transmitted

MR. EDWARD L. REINHARDT
PRESIDENT
MAUI ELECTRIC COMPANY, LTD.
P. O. Box 398
Kahului, HI 96732

Electronically transmitted

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
DAMON L. SCHMIDT, ESQ.
GOODSILL, ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawaii 96813

Electronically transmitted

Co-Counsel for HECO, HELCO, and MECO

//

//

ROD S. AOKI, ESQ.
ALCANTAR & KAHL LLP
120 Montgomery Street
Suite 2200
San Francisco, CA 94104

Electronically transmitted

Co-Counsel for HECO, HELCO, and MECO

MARK J. BENNETT, ESQ.
DEBORAH DAY EMERSON, ESQ.
GREGG J. KINKLEY, ESQ.
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, Hawaii 96813

Electronically transmitted

Counsel for DBEDT

CARRIE K.S. OKINAGA, ESQ.
GORDON D. NELSON, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 South King Street, Room 110
Honolulu, Hawaii 96813

Electronically transmitted

LINCOLN S.T. ASHIDA, ESQ.
WILLIAM V. BRILHANTE JR., ESQ.
MICHAEL J. UDOVIC, ESQ.
DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Electronically transmitted

MR. HENRY Q CURTIS
MS. KAT BRADY
LIFE OF THE LAND
76 North King Street, Suite 203
Honolulu, Hawaii 96817

Electronically transmitted

MR. CARL FREEDMAN
HAIKU DESIGN & ANALYSIS
4234 Hana Highway
Haiku, Hawaii 96708

Electronically transmitted

//

//

MR. WARREN S. BOLLMEIER II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, Hawaii 96744

Electronically transmitted

DOUGLAS A. CODIGA, ESQ.
SCHLACK ITO LOCKWOOD PIPER & ELKIND
TOPA FINANCIAL CENTER
745 Fort Street, Suite 1500
Honolulu, Hawaii 96813

Electronically transmitted

Counsel for BLUE PLANET FOUNDATION

MR. MARK DUDA
PRESIDENT
HAWAII SOLAR ENERGY ASSOCIATION
P.O. Box 37070
Honolulu, Hawaii 96837

Electronically transmitted

MR. RILEY SAITO
THE SOLAR ALLIANCE
73-1294 Awakea Street
Kailua-Kona, Hawaii 96740

Electronically transmitted

MR. JOEL K. MATSUNAGA
HAWAII BIOENERGY, LLC
737 Bishop Street, Suite 1860
Pacific Guardian Center, Mauka Tower
Honolulu, Hawaii 96813

Electronically transmitted

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

Electronically transmitted

Counsel for HAWAII BIOENERGY, LLC
Counsel for MAUI LAND & PINEAPPLE
COMPANY, INC.

MR. THEODORE E. ROBERTS
SEMPRA GENERATION
101 Ash Street, HQ 12
San Diego, California 92101

Electronically transmitted

MR. CLIFFORD SMITH
MAUI LAND & PINEAPPLE COMPANY, INC.
P.O. Box 187
Kahului, Hawaii 96733

Electronically transmitted

MR. ERIK KVAM
CHIEF EXECUTIVE OFFICER
ZERO EMISSIONS LEASING LLC
2800 Woodlawn Drive, Suite 131
Honolulu, Hawaii 96822

Electronically transmitted

MR. JOHN N. REI
SOPOGY INC.
2660 Waiwai Loop
Honolulu, Hawaii 96819

Electronically transmitted

GERALD A. SUMIDA, ESQ.
TIM LUI-KWAN, ESQ.
NATHAN C. NELSON, ESQ.
CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813

Electronically transmitted

Counsel for HAWAII HOLDINGS, LLC,
dba FIRST WIND HAWAII

MR. CHRIS MENTZEL
CHIEF EXECUTIVE OFFICER
CLEAN ENERGY MAUI LLC
619 Kupulau Drive
Kihei, Hawaii 96753

Electronically transmitted

MS. CAROLINE BELSOM
Vice President/General Counsel
Kapalua Land Company, Ltd.,
a wholly owned subsidiary of
Maui Land and Pineapple Company, Inc.
c/o 200 Village Road
Lahaina Maui, Hawaii 96761

Electronically transmitted

ISAAC H. MORIKAWA, ESQ.
DAVID L. HENKIN, ESQ.
EarthJustice
223 South King Street, Suite 400
Honolulu, HI 96813-4501

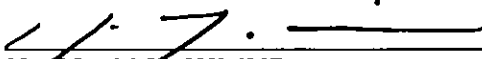
Electronically transmitted

SANDRA-ANN Y.H. WONG, ESQ.
ATTORNEY AT LAW, A LAW CORPORATION
1050 Bishop Street, #514
Honolulu, HI 96813

Electronically transmitted

Counsel for ALEXANDER & BALDWIN, INC.,
Through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY

DATED: Honolulu, Hawaii, March 15, 2010.


HARLAN Y. KIMURA

Attorney for Movant
Tawhiri Power LLC